

DRINKER BIDDLE & REATH LLP  
600 Campus Drive  
Florham Park, NJ 07932-1047  
Tel: (973) 549-7076  
Fax: (973) 360-9831  
E-mail: [marita.erbeck@dbr.com](mailto:marita.erbeck@dbr.com)  
Marita S. Erbeck

*Attorneys for Prologis, L.P.; KTR LV Loan LLC;  
and KTR Ohio LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
<b>In re</b>	: <b>Chapter 11</b>
	:
<b>SEARS HOLDINGS CORPORATION, et al.,</b>	: <b>Case No. 18-23538 (RDD)</b>
	:
	: <b>(Jointly Administered)</b>
<b>Debtors.<sup>1</sup></b>	:
-----X	

**OBJECTION OF PROLOGIS, L.P., KTR LV LOAN LLC AND KTR  
OHIO LLC TO SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Prologis, L.P., KTR LV Loan LLC, and KTR Ohio LLC (the “Prologis Entities”), by and through their undersigned counsel, hereby object to the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [ECF No. 1774] (the “Supplemental Cure Notice”). In support of this Objection, the Prologis Entities respectfully represent as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On or about October 15, 2018 (the “Petition Date”), Sears Holdings Corporation and certain of its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”).

2. The Debtor continues to operate as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On January 24, 2019, the Debtors filed the Supplemental Cure Notice, which identified certain properties owned by the Prologis Entities.

4. The Prologis Entities are landlords to certain of the Debtors at the following locations, also identified on Exhibit B-1 to the Supplemental Cure Notice:

<b>Debtor Name</b>	<b>Landlord Entity</b>	<b>Lease Expiration Date</b>	<b>Property Address</b>	<b>Contract No.</b>	<b>No. on Exhibit B-1</b>	<b>Defined Terms</b>
FBA Holdings Inc.	Prologis/KTR LV Loan LLC	8/31/2018	7370 S Dean Martin Drive Suite 401, Las Vegas, NV 89139	5864	264	The lease, the “ <u>Las Vegas Lease</u> ” and the property itself, the “ <u>Las Vegas Property</u> ”
Sears, Roebuck and Co.	KTR Ohio LLC	12/31/2023	5765 Green Pointe Drive, Groveport, OH 43125	30962	451	The lease, the “ <u>Ohio Lease</u> ” and the property itself, the “ <u>Ohio Property</u> ”

5. The Supplemental Cure Notice identifies the Las Vegas Lease and the Ohio Lease as leases that may be assumed and assigned in connection with the Global Asset Sale Transaction (as defined in the Supplemental Cure Notice).

6. The Las Vegas Lease expired by its own terms on August 31, 2018. The Debtor continues to occupy the Las Vegas Property.

7. The Supplemental Cure Notice also identifies “TLF (Prologis)” as landlord at the properties described below:

Debtor Name	Landlord Entity	Lease Expiration Date	Property Address	Contract No.	No. on Exhibit B-1	Defined Terms
FBA Holdings Inc.	TLF (Prologis)	9/30/2021	9025 S Kyrene Rd (Suites 101-105), Tempe, AZ 85284	5880	267	The “ <u>Arizona Property</u> ”
Innovel Solutions, Inc.	TLF (Prologis)	10/31/2019	15427 Ne Airport Way, Portland, OR 97230	8841	375	The “ <u>Portland Property</u> ”

8. None of the Prologis Entities, nor any of their affiliates, own the Arizona Property or the Portland Property.

### **OBJECTION**

9. For the reasons set forth more fully herein, Prologis seeks (1) clarification regarding the Las Vegas Property and the Ohio Property and (2) correction with respect to the Arizona Property and the Portland Property.

#### **A. The Las Vegas Property**

10. The Las Vegas Lease expired by its own terms on August 31, 2018. Accordingly, the Las Vegas Lease is no longer subject to assumption or rejection under section 365 of the Bankruptcy Code. 11 U.S.C. § 362(d). *See also, e.g., Clys. Contracting & Constr. Co. v. Constitution Life Ins. Co.*, 855 F.2d 1054, 1061 (3d Cir. 1988) (“A contract may not be assumed under § 365 if it has already expired according to its terms.”); *Bell v. Alden Owners, Inc.*, 199 B.R. 451, 462 (S.D.N.Y. 1996) (“Once a lease is terminated,

however, nothing remains for a debtor to assume under section 365.”); *In re Autobahn Classics, Inc.*, 29 B.R. 625, 627 (Bankr. S.D.N.Y. 1983) (same).

11. Prologis understands that the Supplemental Cure Notice does not itself purport to assume or assign any lease, including the Las Vegas Lease. Supplemental Cure Notice at ¶¶7-8. However, Prologis files the within Objection to make clear that because the Las Vegas Lease terminated prepetition, it cannot be assumed as a matter of law.

12. Prologis is not opposed to entering into a new lease with the Debtors or their assignee for the Las Vegas Property, however the parties to any such lease agreement must reach agreement on relevant contract terms.

B. The Ohio Property

13. A lease between Kadish, as landlord, and Sears, Roebuck and Co., as tenant is identified Exhibit B-1, Real Estate Leases, to the Supplemental Cure Notice, line number 451. On its face, it does not appear that the lease between a debtor and Kadish is the Ohio Lease. However, the Supplemental Cure Notice also identifies this lease as contract number 30962, which is the contract number for the Ohio Lease. Accordingly, it is unclear to KTR Ohio LLC, the landlord under the Ohio Lease, whether the Supplemental Cure Notice intends to identify the Ohio Lease or not. Through this Objection, Prologis seeks clarification of this point.

C. The Arizona Property and the Portland Property

14. The Supplemental Cure Notice identifies “TLF (Prologis)” as the landlord of the Arizona Property and Portland Property. None of the Prologis Entities (or any of their affiliates) own these properties. Accordingly, the Debtors should correct the Supplemental Cure Notice with the correct identity of the landlord for the Arizona Property and the Portland Property.

**RESERVATION OF RIGHTS**

15. The Prologis Entities reserve the right to supplement or amend this Objection based upon information acquired by Prologis subsequent to its filing. Prologis also reserves the right to object to adequate assurance information when such information is made available, to exercise all available remedies under the Lease to obtain possession of the Premises (subject to any applicable procedural limitations imposed by the Bankruptcy Code and Rules), and to assert claims against the Debtor (including, but not limited to, administrative expense claims under sections 365(d)(3) and/or 503(b) of the Bankruptcy Code) at the appropriate time.

**CONCLUSION**

16. WHEREFORE, for the reasons set forth above, the Prologis Entities respectfully request that the Court (i) striking the Las Vegas Property from the Supplemental Cure Notice, (ii) require the Debtor to clarify whether the Ohio Property is intended to be included in the Supplemental Cure Notice, (iii) correct the Supplemental Cure Notice for the Arizona Property and Portland Property, and (iv) grant the Prologis Entities such other and further relief as is just and proper.

Dated: Florham Park, New Jersey  
January 31, 2019

Respectfully submitted,

By: /s/ Marita S. Erbeck  
Marita S. Erbeck  
DRINKER BIDDLE & REATH LLP  
600 Campus Drive  
Florham Park, NJ 07932-1047  
Tel: (973) 549-7000  
Fax: (973) 360-9831  
marita.erbeck@dbr.com

*Attorneys for Prologis, L.P.; KTR LV Loan LLC; and KTR  
Ohio LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 31, 2019, a true and correct copy of the foregoing *Objection of Prologis, L.P., KTR LV Loan LLC, and KTR Ohio LLC to the Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* was served (i) electronically on those parties registered to receive electronic notice via the Court's CM/ECF system in these cases and (ii) via the means indicated on the following parties:

Sears Holdings Corporation  
3333 Beverly Road  
Hoffman Estates, Illinois 60179  
Attn: Rob Riecker, Luke J. Valentino and  
Moshin Meghji  
E-mail: [rob.riecker@searshc.com](mailto:rob.riecker@searshc.com);  
[luke.valentino@searshc.com](mailto:luke.valentino@searshc.com);  
[mmeghji@miiipartners.com](mailto:mmeghji@miiipartners.com)

***VIA E-MAIL***

Lazard Freres & Co., LLC  
30 Rockefeller Plaza  
New York, New York 10112  
Attn: Brandon Aebersold and Levi  
Quaintance  
E-mail: [project.blue.rx@lazard.com](mailto:project.blue.rx@lazard.com)

***VIA E-MAIL***

Office of the United States Trustee  
for Region 2  
201 Varick Street, Suite 1006  
New York, New York 10014  
Attn: Paul Schwartzberg, Esq.

***VIA FIRST CLASS U.S. MAIL***

Transform Holdco, LLC  
c/o ESL Partners, Inc.  
Attention: Kunal S. Kamalani and Harold  
Talisman  
1170 Kane Concourse, Suite 200  
Bay Harbor Islands, Florida 33154

***VIA FIRST CLASS U.S. MAIL***

/s/ Marita S. Erbeck  
Marita S. Erbeck